

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

MA243/2023

(Arising from CA20/2022)

In the matter between:

MAURITIUS UNION ASSURANCE LIMITED

(rep. by Mr. B. Georges)

Applicant

versus

MAZU (PTY) LTD

(rep. Mr. B. Hoareau)

Respondent

Neutral Citation: *Mua Limited v Mazu (PTY) LTD* (MA243/2032 arising in CA20/2022) [2025] (12th February 2025)

Before: A. Madeleine, J

Summary: *Amendment of Grounds of Appeal – Appeals from Magistrates Court to Supreme Court – Courts Act (Appeal) Rules*

Heard: Written and oral submissions

Delivered: 12th February 2025

ORDER

The application stands dismissed.

RULING

MADELEINE, J

Introduction

[1] This is an application by the Mauritius Union Assurance Limited (the “Applicant”) under section 146 of the Seychelles Code of Civil Procedure (“SCCP”) for leave to make amendments to the Grounds of Appeal in *CA 20 of 2022 Mauritius Union Assurance Ltd Limited v Mazu Construction (Pty) Ltd* (the “Appeal”).

[2] The Appeal challenges the decision of the Magistrates Court per Mgr. Burian (as she then was) dated 22nd November 2021 in case *CS 112/2019 Mazu Construction (Pty) Ltd*

v. Mauritius Union Assurance Limited awarding Mazu Construction (Pty) Ltd (the “Respondent”) damages in the sum of SR223,857/- together with interest and costs.

[3] The Applicant obtained leave of the Supreme Court on 6th July 2022 to file its appeal out of time from the Magistrates’ Court decision. Thereupon, it filed notice of appeal on 22nd September 2022 and ‘Grounds of Appeal’ on 26th October 2022.

[4] The Grounds of Appeal filed on 26th October 2022 are as follows –

“GROUNDS OF APPEAL”

1. Learned Magistrate Burian erred in fact by finding that a plain reading of the contract did not indicate the clear intention of the parties.

2. Learned Magistrate Burian erred in fact by interpreting “Principal” to mean the Respondent, when a clear reading of the entire Certificate of Insurance and Insurance Covers indicate that “Principal” is a separate entity from “the Insured” or the “Contractor”

3. Learned Magistrate Burian erred in fact by finding that the Respondent’s claim was an insured peril covered by the policy of insurance.

Dated this 25th day of 10 2022”

[5] The parties then filed their respective submissions, and the Judgment was reserved before Adeline, J on 11th 2023 and 30th May 2023.

[6] The Appeal was then reallocated to this Court, and the Applicant took the opportunity to file the present application to insert the following prayer after paragraph 3. of the ‘Grounds of Appeal’ –

“WHEREFORE, it is humbly prayed that this Honourable Court be pleased to allow the Appeal and quash the decision of the Learned Magistrate Burian in CS112 of 2019”

[7] The application is strenuously opposed by the Respondent.

Affidavit in support of Application

[8] The Application is supported by the affidavit of Emilio Freminot, the branch manager and authorized representative of the Applicant dated 13th June 2023. According to the Affidavit, the prayer was not inserted in the 'Grounds of Appeal' by *oversight*, and that based on the advice of the Applicant's Attorney the Applicant believes that -

- a) Section 146 of the Seychelles Code of Civil Procedure allows parties to amend their pleadings at any stage of the proceedings in such manner and on such terms as may be just, and all such amendments shall be as may be necessary for the purpose of determining the real questions in controversy between the parties;
- b) It is in the interest of justice that the Appellant be allowed to file amended grounds of appeal with the prayer inserted in order for the real questions in controversy to be determined exhibiting a copy of the Amended Grounds of Appeal;
- c) The proposed amendments will not prejudice the Respondent in any manner whatsoever and that the Court may, at any stage of the proceedings, allow amendments that will alter or amend the pleadings;
- d) The proposed amendments are just and necessary in the circumstances of the case in order to make a fair and final determination of the issue of law and fact;
- e) The Appellant will be prejudiced if the Appel is ruled inadmissible on a procedural technicality rather than on its merits;
- f) The amendment will not convert the character of the suit into another character;

- g) It is in the interests of justice that leave be granted for the Appellant to amend the Grounds of Appeal.

Affidavit in opposition

[9] The Respondent opposed the application in the Affidavit of Philip Morel, a director of the Respondent, dated 21st July 2023. The Affidavit shows that the Respondent's director has been informed by Attorney-At-Law, Basil Hoareau, that the notice of motion has no merits whatsoever and –

- a) The application is tardy, as it has been made after the written submissions have been submitted by all the parties;
- b) As a matter of fact, after the Judgment had originally been fixed to be delivered in the case before Adeline, J on 11 May 2023 and thereafter on 30 May 2023; and
- c) The application has only been made after the Applicant and/or its attorney-at-law has had sight of the written submissions submitted on behalf of the Respondent, whereby the issue of lack of relief was made a live issue by the Respondent;
- d) The application is an abuse of process as it is not only tardy, but it has no merits including the fact that the lack of relief is fatal to the appeal of the Applicant, as it is tantamount to there being no proper memorandum of appeal.
- e) On the basis of the above, prejudice would be caused to the Respondent if the application is allowed and it should be dismissed with costs.

Submissions

Submissions on behalf of the Applicant

[10] The Applicant submitted in writing that pursuant to section 146 of the Seychelles Code of Civil Procedure (“SCCP”) and under case law, namely *Morin v Pool (2002) SLR 144* and *Casamar v Aristotle SCC 341/1996, 25 July 2002*, amendments may be sought at any stage of the proceedings, even before judgments. It is therefore immaterial that the amendment is being sought late. The amendment is not sought in bad faith, are

necessary in order for the real issues to be determined and will not convert the character of the suit. It is further submitted that the Respondent will not suffer any prejudice if the amendment is allowed as it simply needs time to make submissions on the merits of the appeal rather than the procedural error that the memorandum of appeal lacked a prayer. On the contrary, if the amendments are not granted, the Applicant will be prejudiced as the case will not be decided on the merits but rather on procedural error. Relying on the case *Ablyasoz v. Outen & Ors* (2015) SLR 279 that procedure is the hand maid of justice but should not be made to become the mistress, it is submitted that the Application ought to be allowed in the interest of justice and fairness.

Submissions on behalf of the Respondent

- [11] The Respondent submitted orally. Firstly, Counsel submitted that section 146 of the SCCP, relied on by the Applicant, is not applicable in respect of an appeal from the Magistrates Court to the Supreme Court. Section 146 is applicable when the Supreme Court is exercising its original jurisdiction in relation to amendment of pleadings as opposed to when the court is exercising its appellate jurisdiction. The Appeal Rules made under the Courts Act are applicable, notably, rules 12 and 21. Pursuant to rule 12, there are two imperative elements that must be included in a memorandum of appeal. These are the grounds and the relief in concise prayer. The fact that there is no prayer means that there is no proper notice of appeal before the court. Even if the appeal would have succeeded in the end, the court would not be able to grant any relief. Counsel further submitted that the court's power to allow amendments under rule 21 is limited to amendments to the grounds of appeal in a valid memorandum of appeal. The memorandum of appeal filed is invalid, and the amendment is sought to introduce the relief that was originally omitted in the memorandum.

Law and Analysis

- [12] Civil appeals from the Magistrates Court to the Supreme Court are governed by the Courts Act (Appeal Rules) (the "Rules"). The Rules prescribe that appeals are commenced by delivering a notice of appeal to the clerk of the Magistrates Court within

14 days from the date of the decision appealed against.¹ Thereafter, if the Appellant wishes to proceed with the appeal, he shall deliver a memorandum of appeal to the clerk of the Magistrates Court, within 14 days of receipt of a copy of the record.²

- [13] The Rules also prescribe the contents of the memorandum of appeal. It shall contain (1) the grounds of appeal and (2) a prayer for the relief sought –

“12. Contents of memorandum

The memorandum shall contain a concise statement in numbered paragraphs of the point or points on which the judgment is alleged to be erroneous, without any argument or narrative, and a concise prayer for the relief claimed”

(Emphasis added)

- [14] The time prescribed for taking any step in the Rules, including for filing the notice and a memorandum of appeal that is competent in terms of rule 12, may be extended by the Supreme Court under rule 5 –

“5. Extension of time

Any party desiring an extension of the time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the Supreme Court considers sufficient.”

(Emphasis added)

- [15] Where an extension of time has not been sought or obtained, the appeal is deemed withdrawn by operation of rule 14 –

“14. When appeal deemed withdrawn

¹ Rule 6(1) and (2)

² Rule 11

If the appellant has not complied with rules 11, 12 and 13 within the time prescribed, the appeal shall be deemed to have been withdrawn.”

[16] As regards amendments on appeal, rule 21 stipulates that –

“21. Only grounds pleaded may be argued

An appellant shall not be permitted to put forward at the hearing any grounds of appeal not explicitly stated in his memorandum of appeal, unless in special circumstances by leave of the Supreme Court and subject to such terms as the Supreme Court thinks fit, but in deciding the appeal the Supreme Court shall not be restricted to issues raised by the memorandum.”

(Emphasis added)

[17] Rule 21 is comparable to Rule 18(8) of the Court of Appeal Rules which stipulates as follows –

“The appellant shall not without leave of the Court be permitted, on the hearing of that appeal, to rely on any grounds of appeal other than those set forth in the notice of appeal:

Provided that nothing in this sub-rule shall restrict the power of the Court to make such order as the justice of the case may require.”

(Emphasis Added)

[18] In *Vijay Construction (Pty Ltd v Eastern European Engineering Limited SCA MA 34/2022 [2022] SCCA 57* the Seychelles Court of Appeal considered Rule 18(8) and held that –

“This simply means that it is permissible for an appellant to amend his grounds provided leave is sought and is granted by the Court. Where a party seeks to amend his grounds of appeal and it is unopposed, the Court may very well allow the amendment: see generally Wavel Ramkalawan v

Lizanne Reddy & Anor (SCA 7 of 2016) [2018] SCCA 24 (30 August 2018) at paragraph 8. However, where, as in this case, the proposed amendment is opposed, the Court would have to exercise its discretion to a higher degree and be satisfied that the justice of the case requires that the amendment be allowed.”

(Emphasis added)

[19] From the above interpretation, it is deduced that the Supreme Court, in its appellate jurisdiction from the Magistrates court, also has the discretion under rule 21 to allow amendments on appeal. As rightly argued by counsel for the Respondent, the present application has been moved under the wrong legal provision.

[20] Even if the application would have been moved under the correct legal provision or the court were to decide the present application under rule 21 instead of the invoked section 146 of the SCCCPC, the issue extends beyond a mere amendment.

[21] I agree with counsel for the Respondent that the memorandum of appeal filed on 26th October 2022 is invalid. At the time of filing, the memorandum was fundamentally defective in that it lacked one of the essential ingredients prescribed under rule 12, that is a prayer for the relief sought. Now, the application seeks to bring in a prayer out of time to resuscitate what was never validly in existence. It is my view that this defect cannot be cured by an amendment in the manner sought. I am fortified in my view by the provision of rule 14 that an appeal is deemed withdrawn for failure to comply with, inter alia, rule 12 within the prescribed time. Compliance with rule 12 encompasses filing a memorandum of appeal that contains (1) the grounds of appeal and (2) the prayer for the relief sought within the time prescribed or as extended by leave of the court under rule 5.

Decision

[22] In absence of a valid memorandum of appeal that is also deemed withdrawn by operation of rule 14 (as read with rule 5) of the Courts Act (Appeal Rules), the issue amendment does not arise.

[23] Based on my finding above, the merits of the application also do not arise for determination.

Order

[24] The application stands dismissed.

Signed, dated, and delivered at Ile Du Port, Mahe on 12th February 2025





A. Madeleine, J